United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

B
P/S.

75-1369

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1369

UNITED STATES OF AMERICA,

Appellee,

—v.—

MILTON PARNESS and BARBARA PARNESS,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT REPLY BRIEF AND SUPPLEMENTAL APPENDIX FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

An Overview of What Occurred With Respect to the Suppressed Material

What casts the die decisively against the Government's position is not merely the sheer number of suppressed material—egregious as that is—but the fact that on trial the Government took calculated pains to present the jury with a false mosaic that Allan Goberman, a witness crucial to its case was:

(1) antagonistic to the Government (J389) (S 5, 8-10);

(2) "hated" each one of the several prosecutors and agents involved in the preparation and trial of the case (S 5, 8-10);*

* Appellants' appendix which is cited using the prefix "S" may be found at the end of appellants' joint reply brief.

(3) had "never cooperated" with the government (S 6);

(4) had no personal concern with the outcome of the case (S 9) or ill will towards Parness (S 4), and

(5) since his own troubles with the Government had ended before trial (S 10-16), his trial testimony could not have been given with any hope or expectation of leniency, reward or bias in favor of the Government.

This carefully constructed (now known to be false) prosecution picture of Goberman's motivation, bias, interest and expectation can be seen clearly from a reading of S 4-16 of the supplemental appendix. To be sure, Assistant U.S. Attorney Rosenthal recognized in one of his post conviction affidavits that Goberman was presented to the jury as not only not wedded to the government's position by any bias in its favor, but rather was decidedly hostile to it (J389).

Goberman, Judge Bonsal parenthetically noted was the Government's "key witness" (J554).* It is no overstatement that he was a crucial witness for on his word alone rested the devastating, but disputed claim, that Parness owed Hotel Corp money which he was charged with converting and this was the *sine qua non* of the conviction being upheld.

That his credibility was of vital concern and a critical issue as viewed by the trial judge was clearly expressed by the Court (316a). Without the suppressed material the defense floundered badly in any meaningful

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* That he was a crucial prosecution witness is discussed infra in Point IE.

attempt to demonstrate Goberman was moved by any kind of bias in favor of the Government or that he entertained any hope or expectation of favored treatment which if established would have severely undercut his credibility not on collateral matters, but on matters going directly to his believability and directly relevant to the issues on trial.

The Government erroneously argues that the defense had much material to impeach Goberman by the showing of bad acts. But the Government ignores the distinction in law between proof of bad acts (treated as collateral matters) and proof of bias and motive (treated as not collateral), the latter two being considerably more vital in the assessment of credibility than the first. To be sure, by the carefully constructed government picture of Goberman as one having continuing antipathy to the Government the defense cross examination into motive and bias was stymied.

That a failing attack on Goberman's motive and bias was made at one point and then not pursued at another point by the defense can not extricate the Government from its patent misconduct.* The defense is not required to take stabs at a witness in the dark or stand before a jury and argue the issue of motive and bias stripped bare of any supporting proof, when there is lurking in the background a mass of material, suppressed by the government, which if disclosed would support the defense theory and open up vital areas of cross examination.

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* The clear culpability of the government in not making required disclosure is discussed *infra* in Points II & III at pages 17, 21. Clear from that same discussion as well is that the District Court was clearly erroneous in its finding that the letters were not sent to persons concerned with the preparation or trial of the case.

The defense had the right to have their counsel adequately prepared prior to the commencement of cross examination with the materials at issue herein for use in order to conduct a full and effective cross examination of a vital witness.

As to Gobermans categorical and false declaration (uncorrected by the Government) that: "I never cooperated . . ." (S 6) we have a critical suppressed letter in which he admits otherwise and *post* indictment (but employing the present tense) writes: "I *knock* myself out for you (the Government)" (J582). In addition, shortly *before* indictment he declared that he had done "everything" and "anything" the prosecution had asked of him (J572-574).

To Goberman's categorical and false declaration (also uncorrected by the Government) that he had no personal interest or concern with the outcome of the case we have a mass of suppressed letters and diary pages (affixed in a bizarre way to some letters) reflecting "hopes" and "fear" about his money, his hotel and other wholly unexplained matter which counsel had a clear right to explore. Also to meet his false testimony that he had no ill will towards Parness we have a letter reflecting otherwise. (J591)

At times we now learn he believed things were going his way, at other times against him but what we simply do not know. At times he despairingly noted he had no hope but then something said (what, we do not know) by prosecutor Campbell made him feel "good" . . . like the second resurrection". (J579)

Can we deny not only that the materials contradict the picture of disinterest he perjuriously portrayed at trial, but also that the defense could have fully cross examined and demonstrated not only his perjury but in

developing the basis for his elation, his "hopes" and his expectation for favored treatment? However, the defense could not, adequately prepared, properly and fully explore these areas, not because any court had ruled them out of order, but simply because the government arbitrarily gave the defense no opportunity to do so by suppressing these area opening materials.

Was this a witness who "hated" the Government, a point carefully developed at trial by the prosecution? Aside from his declarations as earlier noted, of his all out efforts for them, he wrote affectionately thanking them "for your past co-operation" (J592) and keeping them abreast of his civil problems and seeking assistance from them (J571, 576). A reading of the materials makes it obvious that he secured assistance with respect to a number of problems, some apparent from the face of the letters, others as yet undisclosed—undisclosed simply because suppression resulted in curtailed cross examination. As to his efforts to recover his funds and his other concerns we do not know what Campbell said which lifted him to ecstatic heights of elation in February 1973 (J579) and resulted in a further meeting with "RJ", which by March 13, 1973 gave him new "hopes" (J586) and now made him "anxious" to get along, at the very least with respect to his efforts to have the prosecutors intercede for him with IRS. The form 843 was not sent directly by him to IRS as required but to RJ's colleague Lawrence Leff who had as earlier noted, rendered so Goberman wrote "past cooperation".

Defense counsel had a clear right to fully explore what gave Goberman the "hopes" he expressed, the elation he felt after meeting with RJ, the nature of the "past cooperation") Leff extended to him, the ways in which he "knocked" himself out, did "anything" and "everything" the government had asked, what it

was they repeatedly asked of him, why he felt at one time they reneged on any or all of what he believed were promises as expressed in J609—a most important letter —whether by such threats he expected to move the government in the direction he had hoped for and whether he was in anyway successful.

But more than this—of deeper concern to the administration of justice—the government struck low blows when by its actions it in effect deprived defense counsel of critical material thereby cutting off a full cross examination of a vital witness and permitting the jury and judge to have presented before them a witness who was allowed to falsely declare his lack of ever cooperating, his initial and continued hostility to the Government and his absence of any personal interest in the case. Such misconduct cannot—simply must not be condoned, especially with a "key witness" in a case where 10 years of a man's life hangs in the balance.*

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* Since the suppressed material "had a direct bearing on the persuasiveness" of Goberman's testimony, and "the significance was evident on their face, and their importance as a tool for impeachment of a crucial witness was inescapable" a reversal *by this court of the convictions* is appropriate without the need for a hearing *United States* v. *Badalamente* 507 F.2d 12 (2nd Cir. 1974). As earlier noted, the government's high degree of clear culpability is fully set forth *infra* Points II & III.

POINT I

The Suppression of High Value Materials Relating to a Crucial Witness Deprived Appellants of Fundamental Due Process.

A. They Evidenced Goberman's Motivation, Expectation and Bias.*

In their main briefs appellants argue that the undisclosed letters evidenced Goberman's motives, expectations of reward and his bias in favor of the Government for testifying against the Parnesses. Numerous letters set forth Goberman's belief that he expected help from Campbell and other government officials on various matters in exchange for his cooperation (J571, 572, 574, 576, 579, 583, 586, 587, 609).

In some of the letters the help and aid he expected from the government in exchange for his cooperation remains unarticulated. Thus he writes:

> I'VE DONE EVERYTHING R.J. HAS ASKED OF ME = *YET NO ANSWERS* MIKE, WHERE DO I GO FROM HERE? I MUST HAVE SOME ANSWERS. (J574)

That nondisclosure of letters such as this one cut off important areas of cross-examination is obvious; counsel prepared with these materials could have effectively explored what made Goberman expect and believe he was entitled to "ANSWERS" from the government and what was said to him which lifted his dampened spirits to great heights of elation. (J579)

In other letters Goberman's high level of cooperation with the government and the particular help he expected

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* In reply to appellee's Point I.A.

in return is spelled out. (See in particular J572-574, 582 and M.Br. at 22-26).*

The government does not seriously argue that the letters do not reveal motives for Goberman's cooperation with the government and his bias. Nor does it dispute that the letters could be used by a defense lawyer as an important and useful device in the cross-examination of a witness. Rather, it argues that the motivations for Goberman's testimony which are revealed by the letters were cumulative with a variety of substantial and persuasive albeit abstract *potential* motivations for Goberman to cooperate with the government, upon which he could have been cross-examined (Govt. Brief at 11).

The simple answer to this argument is that such potential motivations for Goberman's testimony are totally speculative. The withheld letters contain hard, tangible evidence in Goberman's own hand revealing his bias and expectations of aid and help from the government in return for his cooperation. Counsel was not required to speculate on possible motivations for Goberman's testimony or embark on areas without being prepared in advance by access to these materials while the government sat on the letters which revealed Goberman's real reasons for cooperating. Moreover, as Goberman constantly denied that he cooperated with the government or expected anything from the government, the letters would have forcefully shown this to be untrue. (See in particular J572 and 582—I've done "anything" and "everything" the government asked and did "knock myself out for" the government.)

The government's other claim is that defense counsel established and argued other motivations for Goberman's

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* "M.Br." denotes main Milton Parness' brief. "B.Br." denotes references to main brief of Barbara Parness.

testimony against the Parnesses, *e.g.*, lenient treatment in his tax case, revenge on Parness for his financial ruin. The problem with this argument is that these motivations were either disputed by the government or denied by Goberman (M.Br. 22-25). The motivations provided in the letters, on the other hand, could not be so disputed by the government or denied by Goberman. They would have provided the hard facts for powerful arguments by counsel regarding Goberman's expectations of aid and help from the government in return for his testimony.

The government states for example, that Goberman's testimony, "Yes, I blame Mr. Parness quite certainly, yes" established a sufficient motive for defense counsel to argue to a jury that Goberman was untruthful. But the statement when read in context could not have possibly convinced anyone that Goberman's testimony was colored by a motive of revenge:

A. Yes, I blame Mr. Parness quite certainly, yes.
Q. And, of course, therefore in your testimony here on the stand you bear no good will toward Mr. Parness, do you.
A. *I bear no ill will against anyone.*
Q. I see. But you bear no specific ill will against Mr. Parness?
A. *I feel sorry for Mr. Parness.*

* * * * *

A. *I think he is sick. I feel sorry for him.* (163a)

On the other hand Goberman wrote to Campbell:

> YOU KNOW R.J. IT MAKES ME SHUTTER IN DISGUST (& FRIGHT) WHEN I THINK THAT THESE WERE THE KINDS OF PEOPLE (ANIMALS) I ACTUALLY "RUBBED SHOULDERS" WITH—IN THAT G. D. CASINO. (J591)

The government fares no better with its argument that defense counsel "dramatically illustrated . . . Goberman's motives to gain favorable treatment from the government in his tax evasion case" (Govt. Br. at 13). The government spent a number of pages establishing that Goberman was indicted after his grand jury testimony in the Parness case and had already been sentenced on his own cases at the time of trial and thus, his trial testimony could not have been given with any expectation of favorable treatment (M. Br. at 23 & S). Defense counsel's summation show that he could, at best, argue weakly in the face of the facts.

Because of these obvious flaws in its argument that the letters are cumulative, the government attempts to belittle one of Goberman's motivations for cooperating as spelled out in his own letters. In particular, it claims that his expectation and hope for governmental assistance in recovering the $60,000 was "insignificant" (Govt. Brief at 15). However, this is clearly one of the important expectations Goberman spells out in his letters.

More importantly, the government refutes its own argument. Thus, in claiming that defense counsel should have asked Goberman about what steps he took to recover the $60,000, the government stresses the importance to Goberman of such a large sum of money:

> Given Goberman's bankruptcy, reliance upon his social security check as his sole source of income and his statement that he was still trying to get the government to pay his travel expenses for his frequent trips to Washington to help the government (Tr. 232), the importance of $60,000 to Goberman could hardly have been lost upon experienced defense counsel. (Govt. Brief at 16).

Goberman's expectation that the prosecutors would have the $60,000 returned to him was not a mere

"possibility" as the government suggests. Goberman expected the prosecutors' intercession (J589, 590, 592).

It is important to understand that Goberman does not articulate by any means all of the help which he feels the government promised him in exchange for his cooperation (*e.g.*, J572, 594, 579). Apparently the government's reneging on some promised help led Goberman to threaten to go to a senate committee (J609).

The reasons Goberman felt such a meeting was necessary, the substance of his proposed complaints to the Senate, and an explanation of what help he expected or was promised from the prosecutors and what if anything he secured thereby would have provided a rich field of cross-examination. The issue is not only what rewards he obtained, but what he expected and hoped for.

The government certainly had no right to in effect curtail a full and effective cross-examination by its own arbitrary act of suppressing the material at issue.

B. They Evidenced Eagerness to Cooperate.*

On trial Goberman falsely testified he "never cooperated" with the Government (S. 6).

The government claims that the numerous letters demonstrating Goberman's willingness and all out efforts to help the government are cumulative with information contained on the tape made of Goberman's debriefing by government agents (Govt Br. 18-19). A reading of the transcripts of those tapes lends no support to any such defense argument (see G. 368).**

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* In reply to appellee's Point I, B.

** Government Appendix.

Nothing in the tapes demonstrates Goberman's willingness to do "(anything) everything" the government asked him to do (J572 and see J568, 574, 579, 584 and 591). At best, the tapes show a person who with reluctance talked to the government (G. 65-69).

The government claims that the tapes are cumulative of the letter revealing that Goberman, believing the prosecutors wanted evidence in St. Maarten, actually went there, lied to Parness to obtain financing for the trip, and passed a bad check (J604). However, the tapes establish that Goberman went there for his own reasons, not to gather evidence and not at the suggestion of the government (G. 356).

The government fares no better with its argument that defense counsel knew, but did not utilize information at trial which was cumulative with the close, friendly relationship shown by the letters (Govt Br. at 18).

The story about Glaze's offer is misleading. Although Glaze did make such an offer, the government omits the crucial fact that Goberman refused the offer (302a). Thus, the facts there presented show that the incident was consistent with the "hate" he falsely expressed for Glaze at trial. The complaint to McGuire during trial about an impacted tooth is hardly sufficient to counter Goberman's trial testimony that he "hate[s]" McGuire (271a). This is particularly so when McGuire represented to the Court at trial that: "Mr. Goberman refused to see me and that I had not been able to talk to him for several months". (S 9)

The fact that he called Pollack and Eissler by their first names on the tape is irrelevant: the officials he claimed he hated in his trial testimony were McGuire, Campbell, Dowd & Glaze (S. 5, 8-10).

C. The Suppressed Materials Along With the Depositions Contain Exculpatory Evidence.*

The Government's response (Point IC) misses the thrust of appellants' contentions. In an attempt to rebut appellants' contentions that material in the depositions and letters demonstrate that Parness was not the sole and exclusive marker collector, the government cites a number of passages of Goberman's trial testimony which it claims is consistent with these materials. Those quotations (Govt. Br. 22) show only that "there were other junketeers, but they had to work through Mr. Parness" (Tr. 59). Certainly there were other junketeers. The key fact, however, is that the new evidence shows that these other junketeers were dealing directly with Goberman and that Parness was therefore not the exclusive collector. It is this critically important fact which remains unrebutted (J594, 595, 588). In fact, the deposition testimony shows that Goberman was conducting his own junkets and making his own collections.

Thus Blandino testimony at his civil deposition as adopted by Goberman (J288-289) was that Goberman made his own collections on at least two junkets (J230).

This deposition testimony taken together with at least two of the withheld Goberman letters reveal that Parness was not the exclusive marker collector.** It follows, therefore, that the new evidence is inconsistent with Goberman trial testimony and demonstrates that Goberman perjured himself at trial. In this context the suppression of these material and favorable facts and documents denied the appellate fundamental due process.

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* In reply to appellee's Point I, C.

** See J594, where Goberman states that "Samuel Norber, of Detroit, Mich. as a junketeer operator, *was responsible to collect and deliver to me,* or my designated agent all gambling losses . . ."

D. Materials Establishing a Witness's Motivation Expectation and Bias Does Not Relate to Collateral Matters.*

The government argues that "even assuming that the letters do tend to impeach Goberman, their utility pales in light of the extent to which Goberman's testimony was discredited."

The government's error is in mistaking impeaching material, i.e. proof of the bad acts for the much more powerful information contained in the letters which reflect on Goberman's strong motivation, bias, hope and expectations.

The distinction between the high value of material establishing motivation and bias as compared with materials of a general impeaching nature is distinctly recognized in the law. McCormack on Evidence § 40 (1954 ed.); 6 Wigmore on Evidence § 1005(b)(c); *United States* v. *Harris*, 501 F.2d 1 (9th Cir. 1974); *United States* v. *Rodriguez*, 43[illegible] F.2d 782 (9th Cir. 1971); *United States* v. *Hartman*, 417 F.2d 893 (9th Cir. 1969).

By the government's failure to disclose the twenty-six letters which set forth Goberman's bias and motivations, appellants were cut off from exploring this "essential" area *by the use of hard, tangible, documentary proof.*

The government incorrectly attempts to liken this case to *United States* v. *Rosner*, 516 F.2d 269 (2d Cir. 1975). However, in *Rosner* the kind of impeaching material did not go to the credibility of a witness whose testimony was essential to Rosner's conviction and

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* This is in response to appellee's Point, I, D.

it did not relate to bias, motive, hope or expectation—non-collateral matters. As the Court in *Rosner* said:

> Moreover, the prosecution's case rested on far more evidence than simply Leuci's testimony. *The Rosner case was unusual in that the defendant admitted his technical guilt of the offenses charged.* *Id.* at 274

In this case the impeaching material regarding Goberman's bias and motivation concerns a crucial witness.

E. Goberman Was Crucial to the Government's Case.*

In a specious attempt to minimize the effects of its suppression of evidence, the Government attempts to reduce Goberman's importance.

This Court in its recitation of what the proof showed obviously viewed Goberman as a crucial witness. (503 F.2d at 433-435). The Court below stated that Goberman "was the government's key witness at trial." (J554).** Goberman's examination (consisting in excess of 550 pages) consumes *more than one-half* of the government's case.

Goberman's testimony was crucial to the government for through that testimony alone it attempted to establish that Parness had converted marker collections. Without proof of that conversion, no conviction could be gotten. Without believing Goberman, there simply was no proof of any theft. The contention that "virtually all the elements of the conversion of the money" were cir-

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* In reply to appellee's Point, I, E.

** Moreover, the government in its brief on the direct appeal herein stressed Goberman's importance to its case in its recitation of what it believed the proof showed (B21-22).

cumstantially proven misses the vital point. That is, it was Goberman alone who testified as to the amount of marker collections due and owing, the amount withheld and the methods used in collection and remittance. Stated another way, *but for* Goberman's testimony on the alleged theft of money, there would be no case. The examples of concealment, without Goberman's testimony, demonstrate nothing more than an attempt by Parness and Goberman to defraud the latter's creditors (J410, 64-67). William F. Hamilton, an attorney intimately involved with the facts of this case, testified without contradiction, in his civil deposition that:

> Mr. Goberman said he might have some problems too because he was concerned about his name (Goberman) appearing on any document that would show that he had any money or any property when he had people after him who might discover it, and he meant creditors I'm sure, because I listened and he seemed to have plenty of problems in that direction. (J65).

Finally, the government's conclusion that appellants' conversion of money in Counts Four and Six as well as the basic elements of their overall scheme to defraud came from other witnesses is simply untrue. Despite the testimony of the other junketeers that Parness was acting as a collection agent for the Hotel, Goberman and only Goberman testified that Parness allegedly owed him monies or withheld funds. Moreover the junketeers testimony related to a time-frame subsequent to February 1971, and thus, was totally irrelevant to the issue of theft as alleged in the indictment.

POINT II

The Misconduct of the Prosecution is Established as a Matter of Law.

The prosecution's failure to turn over material of which it had knowledge and which was of high value to the defense constituted gross negligence as a matter of law and required without any hearing a new trial.*

Appellants argue the fifteen letters sent by Goberman to R. J. Campbell could not have failed to escape his attention and should have been disclosed to defense counsel.**

The court below was *clearly erroneous* in holding that none of the recipients of the letter was involved in the preparation or trial of the case. The government submitted no affidavit from Campbell, explaining the failure to disclose letters and this cannot be attributed to mere oversight in the preparation of its response.

The government states that Campbell's failure to turn over the letters was not grossly negligent because: (1) "he had no role in the prosecution" of this case;

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* Appellants do not, as the government asserts, make "no claim that the government deliberately suppressed the letters. . . ." (Gov't Brief at 33). Appellants, in fact, believe that Campbell, Dowd, or others may have deliberately suppressed the letters. This question cannot be determined without a hearing. (See Point III of M. Br. and Point II B. Br.)

However, the question of gross negligence is primarily a legal one dependent on the high value of the material and the prosecutors' knowledge of the letters prior to trial. (M. Br. at 33; B. Br. at 21).

** Appellants also believe that Glase's and Pollack's nondisclosure of the letters constituted gross negligence as a matter of law.

(2) "took no part in responding to the Parnesses' motions;" and (3) his "actual role" in the case ended "shortly after" the February 1973 indictment (Govt. Brief at 30, 31).

All three of these statements are simply and entirely false.

First, Campbell's affidavit, submitted in 1975 in connection with another matter in the Parness case, declares that he supervised and participated in the investigation of Parness which led to the indictment. (J454).

Second, the government admits that Goberman testified about this case in the grand jury on a number of occasions with Campbell and Dowd, his assistant, appearing for the government (Govt. Br. at 30). This testimony led to the indictment of Parness in February 1973. Dowd, the admitted subordinate of R. J. Campbell was one of the two trial associates.

Third, Campbell continued to play an active role in this case through trial. Campbell remained in charge of Strike Force 18 throughout the entire trial of this case which began in early September, 1973. Throughout this period Dowd was a deputy to Campbell with Strike Force 18.

Directly contrary to the government's assertion that he was not involved in "responding to the Parnesses motions" (Govt. Brief at 31), *he is listed* as one of the government attorneys on the brief submitted in response to the motions to dismiss the indictment, for a bill of particulars, and for *Brady* material (S 1-). He is listed as one of the attorneys appearing for the government in an opinion of the District Court dated as late as May 17, 1973 (S 2). Ironically it is this very opinion which required the government to produce *all Brady* material (28a).

Fourth, on May 1, 1973, some four months after he purportedly turned this case over to the United States Attorney for the Southern District, Mr. Campbell in a sworn affidavit stated:

> I am a Special Attorney, Organized Crime Section United States Department of Justice *and a Special Assistant United States Attorney in this District.* I have been assigned to supervise and conduct the criminal investigation of the acquisition and operation of the St. Maarten Isle Hotel and Casino by Milton Parness.

Fifth, the government concedes that Campbell was present in the Southern District and in McGuire's office when Goberman arrived two days prior to trial to review his testimony. Furthermore, it is undisputed that Campbell was present in the courtroom for part of Goberman's testimony, a witness who Campbell described as his witness (J453).

Sixth, at one point *during trial* the government requested certification to take a deposition of a witness. Henry E. Petersen, Assistant Attorney General, sent a letter to Judge Bonsal granting the request. A copy of this letter was sent to *Campbell*, not to McGuire or Dowd (S 3).

Seventh, as the explanation for Campbell's presence in the Southern District during the trial, the government states he was there to testify as a witness in the perjury trial of Edward Feldman, a defendant who pleaded guilty and testified against Parness. This admission clinches Campbell's active involvement in the Parness case through trial.

Here too, Campbell was present in the courtroom when Feldman testified against appellants.

Eighth, where the government misunderstands its obligation is when it seeks to insulate itself from culpability by suggesting that during the trial Campbell had little to do with Goberman. Even assuming such limited contact the fact is not disputed that Campbell had contact during the trial with the trial assistants and that triggered his obligation to disgourge the materials at issue.

Ninth, even were the government correct in claiming that Campbell's active role ended in February, 1973, it is legally frivolous to argue that he did not have an obligation to disclose letters received after this date. Campbell was not a prosecutor who merely had a passing acquaintance with the Parness case; nor was he a prosecutor involved with a different prosecution of Parness, *e.g.*, Morvillo in *United States* v. *Pacelli*, 491 F.2d 1108 (2d Cir. 1974). He was involved with this very case and his obligation was clear, *e.g.*, De Paola in *Giglio* v. *United States*, 405 U.S. 150 (1972). To hold otherwise would permit the government to escape its *Brady*, and 3500 obligations merely by changing prosecutors a few months prior to trial.*

The failure by Campbell and others intimately involved with the prosecution to turn over numerous letters of high value to the defense constituted gross negligence as a matter of law and requires a new trial.

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* This case is wholly different from *United States* v. *Quinn*, 445 F.2d 940, 943-944 (2d Cir.), *cert. denied*, 404 U.S. 850 (1971) Appellee's Br. p. 34. In that case, this Court held that a United States Attorney in New York is not presumed to have knowledge of a sealed indictment brought in Florida in a wholly unrelated case. Here Campbell, by his own words was the attorney in charge of this prosecution.

POINT III

An Evidentiary Hearing is Required on the Issue of "Deliberateness".*

In light of the clear misconduct of the government, a reversal of the convictions by this court is mandated without the necessity of a hearing and this is pressed by appellants as the appropriate remedy. *United States* v. *Badalamente*, 507 F.2d 12 (2d Cir. 1974). Alternatively, for the reasons below, at the very least, a remand is in order.

The Government conceded that "Mr. Dowd apparently made no careful analysis (of the file)" Minutes of Argument, August 27, 1975 at 14. That much we have by admission. But it is simply not appropriate to take the untested word of the culpable party (in this case the government) as to the extent or degree of its own misconduct. *United States* v. *Hilton*, 521 F.2d 164 (2d Cir. 1975).

The government argues that it was unnecessary for the District Court to hold a hearing on the culpability of the prosecutors in not disclosing the letters because Dowd's affidavit "coupled with the fact that the letters were not sent to the prosecutors who tried the case, but were sent to people in cities throughout the country," provided a sufficient basis for a finding of inadvertent nondisclosure (Govt. Brief at 35).

A more misleading and irrational argument is difficult to imagine. *The argument flies in the face of the fact that not one prosecutor or government agent who received letters in this case submitted an affidavit explaining his failure to disclose the letters.* On a record

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* This is in support of Milton Parness's Point III, Barbara Parness's Point II and in reply to part of Appellee's Point II.

totally barren of any explanations by the recipients of the letters, there is simply no basis whatsoever for the District Court's finding of inadvertent nondisclosure.

The government, however, attempts to supply that basis by claiming that the letters received by all of these prosecutors and agents are not to be imputed to Dowd, who was responsible for *Brady* material, because "documents contained in the files of one prosecutor geographically distant from another cannot be imputed to the prosecutor without possession of them, absent his knowledge of their contents (Govt. Brief at 34).

The factual premises upon which this argument is based are false.* Dowd shared an office with Campbell who was his superior (J597). Both were in New York for the trial. This brings Campbell and Dowd squarely within the rule of *Giglio* v. *United States*, 405 U.S. 150 (1972) and *United States* v. *Duardi*, 384 F. Supp. 861 (W.D. Mo. 1973), gov't appeal dismissed for lack of jurisdiction, 514 F.2d 545 (8th Cir. 1975).

The letters to prosecutor Pollack, cannot be treated differently. He too was not a stranger to this case. Goberman was initially his witness, and in late 1972 appeared with him before a grand jury (Govt. Br. at 30). Goberman continued well into 1973 to communicate with him and Pollack on several occasions attempted to set up meetings between Goberman and Campbell to iron out Goberman's complaints (J452).

The prosecutors and government agents who received the letters are the only witnesses who can supply

---

* Appellants also do not believe that the argument is legally correct. However, the factual premises are so patently false that the legal argument need not be addressed.

the relevant facts surrounding their nondisclosure. They have not yet been heard from and their testimony is required before a finding of inadvertence can be made. *United States* v. *Hilton*, 521 F.2d 164 (2d Cir. 1975); *United States* v. *Morell*, Dkt. No. 74-1822 at 5880 (2d Cir. Decided Aug. 29, 1975).

Finally in what must be viewed as a throw-away argument, the government claims that appellants failed to request a hearing on the issue of inadvertence and that appellants never claimed that the affidavits were insufficient.

Appellants requested a hearing on at least four separate occasions. See the letters sent the Court reproduced at J411 and J413 and two additional letters in the record dated August 15 and September 5, 1975 from John Pollok, Esq. to Judge Bonsal. These letters cited *United States* v. *Hilton*, *supra*, and *United States* v. *Morell*, *supra*, and specifically requested a hearing on the issue of inadvertence. The contention being that the affidavits or absence thereof were an inadequate basis upon which to determine inadvertence. At oral argument appellants argued vigorously for a factual hearing. (Minutes of Argument, August 27, 1975).*

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* For some reason the government cites this Circuit's recent case, *United States* v. *Franzese*, Dkt. No. 75-2051 (2d Cir. Decided Oct. 30, 1975) in support of its argument that no hearing is required on the issue of inadvertence. *Franzese* is totally inapposite to appellants' situation. The issue in *Franzese* was whether or not the government *had* information which it did not disclose regarding the credibility of witnesses at trial. The Court found that the affidavits submitted by the defendants did not support the claim that the government had such information. In appellants' case we know the government had the letters which it did not disclose.

CONCLUSION

For all of the above reasons appellants' convictions should be reversed and a new trial granted. Alternatively, the case should be remanded for an appropriate hearing.

Appellant Milton Parness's sentence should also be vacated for the reasons set forth in his main brief and he should be resentenced before a different judge.

Respectfully submitted,

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JOHN L. POLLOK
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SUPPLEMENTAL APPENDIX

(Brief Cover to Government's Pretrial Memorandum of Law)

75 Cr. 157

UNITED STATES OF AMERICA,

—v.—

MILTON PARNESS and BARBARA PARNESS,

Defendants.

MEMORANDUM OF LAW FOR THE UNITED STATES OF AMERICA IN OPPOSITION TO PRE-TRIAL MOTIONS

WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

HAROLD M. McGUIRE, JR.,
Assistant United States Attorney
ROBERT J. CAMPBELL,
JOHN DOWD,
Special Assistant United States Attorneys, Of Counsel.

* * * * *

(Final Page of Pretrial Memorandum)

CONCLUSIONS

For the reasons stated, the motions should be denied.

Respectfully submitted,

WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

HAROLD M. McGUIRE, JR.,
Assistant United States Attorney
ROBERT J. CAMPBELL,
JOHN DOWD,
Special Assistant United States Attorneys, Of Counsel.

Memorandum Decision (Filed May 17, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA
—v.—
MILTON PARNESS and BARBARA PARNESS,
Defendants.

WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for the
Southern District of New York
Attorney for the United States of America
HAROLD F. MCGUIRE, JR.,
Assistant United States Attorney
ROBERT J. CAMPBELL,
JOHN DOWD,
Special Assistant United States Attorneys
Of Counsel
ROY M. COHN
Attorney for Defendants
MICHAEL ROSEN,
Of Counsel

BONSAL, *D.J.*

A 5-count indictment filed on February 13, 1973 charges defendant Milton Parness, in Count One, with acquiring an interest in an enterprise in interstate or * * * * *

Exhibit J—Letter Dated September 18, 1973 to Hon. Bonsal From Henry E. Petersen

September 18, 1973

T: 9/18/73
HEP:WSL:RJC:adl
123-66
Honorable Dudley B. Bonsal
United States District Judge
United States District Court
For the Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

Re: *United States of America*
v.
Milton Parness and Barbara Parness

No. 73-Cr. 157
(*U. S. D. C. S.D.N.Y.*)

Dear Judge Bonsal:

By reason of Order No. 452-71 from the Attorney General of the United States dated January 30, 1971, I have been designated and authorized to make the certification required by Title 18, United States Code, Section 3503(a) (Pub. L. 91-452 Title VI, Section 601(a), Oct. 15, 1970, 84 Stat. 934).

I hereby certify that the above-entitled criminal proceeding is against Milton Parness who I believe to have participation in an organized criminal activity which is the subject of this proceeding.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General

CC: Records
Petersen
Lynch
Campbell—2722
Office Chron.—2722
Parness File—2722

Excerpts From Trial Transcript
GOBERMAN—CROSS

Q. That's an answer. A. May I finish the answer to your question?

Q. Surely. Any time. By the way, in the course of any of my questions, if you feel I haven't given you a fair opportunity to answer the question put to you, please——

The Court: Let's not go into it. Go ahead.

A. I had to make good on the loans that I made, like I always had. I have always made my loans good to the banks in a period of 30 years, and when Mr. Parness stole the hotel away from me, I was obligated to pay those loans back and the banks used the securities that I gave them, my name, I had insurance policies worth a hundred thousand dollars, I had a home worth two hundred thousand dollars, all these things were lost in order to repay the bank.

Q. Right. So then the answer to my question is yes? A. Yes, I blame Mr. Parness quite certainly, yes.

Q. And, of course, therefore in your testimony here on the stand you bear no goodwill toward Mr. Parness, do you. A. I bear no ill will against anyone.

Q. I see. But you bear no specific ill will against Strike Force.

The Court: That is part of the prosecuting attorneys.

Q. Do you know two Mr. Campbells working on this case? A. No, I just—I know of one Mr. Campbell.

Q. Talking about that tone Mr. Campbell working on this case when did you first talk to him about Mr. and Mrs. Parness? A. I don't remember the date but it was after I was subpoenaed to bring records of the hotel and so forth and so on.

Q. Do you know one of the agents working on this case named Agent Glaze of Internal Revenue Service? A. Is he sitting over there in this room?

Q. He is sitting here? A. Back there on the left side.

Q. The gentleman with the mustache? A. No.

Q. Have you ever talked to Agent Glaze about Mr. and Mrs. Parness? A. Sure.

Q. For how long have you been talking to Agent Glaze? How long do you know him, by the way? A long time? A. I know him since the first time he tried to put me in jail.

Q. He is the one who made the income tax case against you? A. Yes, I hated him for it.

Q. And then you made up with him? A. No, I still hate him.

Q. During the period of time you were hating him— A. I hate Mr. Campbell and I hate Mr. McGuire because these people will try to put me in jail.

Q. You haven't gone to jail? A. I haven't gone to jail as yet.

Q. Do you hate the prosecutor who got up in federal court and told the Judge that the Judge could not send you to jail as a result of an arrangement made with you? A. I don't know who you are referring to.

Q. You don't remember who your prosecutor was in the tax case? A. You mean in Philadelphia?

Q. Yes. A. I am sorry, I can't give you a direct answer.

The Court: Let us slow down here.

The Witness: He is getting me excited.

The Court: You just relax. Don't let him get you excited. What is your question, Mr. Cohen?

Q. Do you know a man by the name of Joel Salomsky? A. No, sir.

Q. You don't know the name of your prosecutor in the tax case? The answer is no and I can give you the reason why.

Q. I really don't care to know. I am going to show you once more page 5, the court transcript and ask if you were present in federal court at the time the government got up and announced to the court it had agreed to dismiss the six counts of the criminal information against you? Look toward the bottom of the page. A. Mr. Salomsky is named here?

Q. Yes. Would you please read it before you tell us.

The Court: He is asking you to read on page 5 whether there is a statement that the government agreed to dismiss the five counts. Where is that?

Mr. Cohn: Toward the bottom and it goes on to page 6.

The Court: Read it to yourself. A. Yes, sir.

Q. Does that refresh your recollection that you were there when the government announced it had agreed to dismiss these charges? A. I was there but I don't remember a Mr. Salomsky.

The Court: Do you remember anybody——

The Witness: Mr. Mikowsky was the prosecuting attorney. I don't remember Mr. Salomsky.

Mr. Cohn: Are we going to stop pretty soon?

The Court: Yes, we are.

Mr. Cohn: Would you like me to go a few more minutes?

The Court: Let us try a few more minutes.

Q. Mr. Goberman, when did you start cooperating with the prosecution with reference to a case against Mr. and Mrs. Parness? A. I never cooperated——

Mr. McGuire: I object. I objected to this before.

The Court: I sustained that objection before. I will ask you to ask that question. I told you that you can ask him when he first talked to any federal agent about the case against Mr. Parness and who the agent was and when you can follow through and develop that.

Mr. Cohn: Yes, sir, your Honor. I will do.

Q. When did you first talk about Mr. and Mrs. Parness to any agent of the federal government? A. When I was subpoenaed to do so.

The Court: When was that?

The Witness: I don't have the date in front of me. It was a subpoena that I received.

The Court: Was that this year, last year?

The Witness: That was prior to the period that Mr. Cohn is talking about.

The Court: Prior to the time you were in Philadelphia?

The Witness: Yes, sir. That was seven or eight months prior to the time of this income tax thing.

Q. So seven or eight months prior to the time you were given probation rather than jail in the income tax case.

The Court: Please don't make a summation. It is seven or eights months before your appearances in the Pennsylvania federal court in connection with these indictments or information?

The Witness: Yes, sir.

The Court: Who did you speak to and about when?

The Witness: I received a summons——

The Court: Subpoena? ?

The Witness: Yes, a subpoena from an attorney by the name of Pollack to appear in Brooklyn and to bring all records of the hotel, et cetera. I did appear. I had no records and so forth. Right after that I believe I received a subpoena from Washington from Mr. Campbell that we were talking about.

Q. Mr. Campbell? A. Yes, sir.

Q. When you got the subpoena did that result in a meeting you had with Mr. Campbell? A. Being what?

Q. After you received the subpoena did you have occasion to meet Mr. Campbell? A. Yes, I followed the instructions on the subpoena.

Q. Did you meet Mr. Campbell? A. Did I meet Mr. Campbell?

Q. Yes. A. Yes, of course I met him.

Q. About when was that? What that approximately six months prior to the disposition of the charges against you in Pennsylvania? A. I would think so, yes. It sounds about right. I met him in New York here at the grand jury.

Q. Did you speak to him outside of the grand jury? A. After that I spoke to him, yes.

Q. On how many occasions between the time you met him on that day and the time you were sentenced in federal court approximately? A. I would say—and this figure is clear in my mind because I was asked to come to Washington by Mr. Campbell on about 7 occasions and I did and I am cross at Mr. Campbell because he never paid me my expenses.

The Court: 7 times because he didn't pay me the travel expenses for the 7 times I went to Washington and I am still trying to get it.

Q. And the government is keeping this money from you? A. I forgot to fill out a form the first time and I never got paid.

The Court: I am afraid to tell you what happens to me when I go to Washington and the forms I have to fill out.

The Witness: Well, that is it.

Q. On these 7 occasions, about how much time did you spend with Mr. Campbell? A. About an hour or so in the office. I don't remember.

Q. On each occasion, is that an approximation? A. I beg your pardon?

Q. About an hour or so on each occasion? A. Maybe two hours.

Q. Did you talk about Mr. and Mrs. Parness at all? A. Yes. I didn't know she was Mrs. Parness.

Q. You didn't know they were married? A. Mrs. Parness and Barbie.

Q. You talked about Mr. Parness and Barbie. Who was present besides Mr. Campbell at these interviews? A. At times his assistant, a fellow by the name of Friedman.

Q. Did there come a time when you met Mr. Dowd, the gentleman seated here? A. I met him recently and we have been fighting since the first day I met him.

Q. Mr. Goberman, please answer the questions, please. A. Yes, sir.

Q. Was Mr. Friedman present on all occasions when you talked to Mr. Campbell? A. Just on several occasions.

Q. Did Mr. Campbell or Mr. Friedman take any notes during those occasions?

* * * * *

Q. Did you regard the testimony you gave before the grand jury in this case as one of those things that was unimportant to you? A. I don't think I would want to use the word unimportant to reference to this. I would say that you would have to consider my emotional feelings and my state of mind at that time. I really didn't care. I wasn't really interested.

Q. You were not interested? A. I went there because I was asked to go by my government to appear and I went there. I was subpoenaed, but I really had no personal interest in—I didn't care what happened there.

Q. Did you know that a purpose of a grand jury proceeding is the possible indictment of people for criminal offenses? A. I gave it absolutely no serious thought. I didn't care what it involved, who it involved. I went there at a time when I was at a very low stage emotionally, healthwise, I was getting over a heart attack, and I just didn't care what happened. I was there.

Q. My question was simply did you know that one of the possible actions of a grand jury— —

The Court: But be gentle: Ask him, "What time did you arrive on Monday and see these fellows, where did you see them?"

Mr. Cohn: I will do my best to control——

Mr. McGuire: Previous to Monday, I can also represent to the Court that Mr. Goberman refused to see me and that I had not been able to talk to him for several months.

The Court: All right.

Mr. Cohn: An extremely reluctant witness, your Honor.

The Court: All right. (In open court.)

BY MR. COHN:

Q. Mr. Goberman, I want to put it to you again and I want you to consider this question very carefully before you answer it.

Is it not a fact that on Monday, September 10, in this courthouse, you spent several hours reviewing with Mr. McGuire and representatives of the government the subject matter of testimony you were to give on this witness stand?

The Court: I sustain the objection to the last part of that question.

Excerpts From Trial Transcript

GOBERMAN—REDIRECT

Q. Mr. Goberman, on cross-examination Mr. Cohn asked you a number of questions on whether you had made what he called a formal plea bargaining deal with the government and whether you had cooperated with the government in connection with preparing for testimony in this case. Do you recall those questions and your answer? A. Yes, sir.

Q. When were you first indicted by the United States Government, by the grand jury? A. I don't remember the exact date.

Q. If I showed you the indictment would it help refresh your recollection? A. Yes. I would appreciate that.

Mr. McGuire: May this be marked as an exhibit for identification. ((Government's Exhibit 195 marked for identification.)

Q. I would like to show you what has been marked as Government's Exhibit 195, Mr. Goberman. That purports to be certified copies of federal court records in Pennsylva-

nia. Can you take a look at that and tell us when you were first indicted? Just the month will be good enough. A. Would that be June 171? I can't see—there are several dates on here.

Q. I direct your attention to the first line. A. June 24, 1970.

Q. 1970? A. Yes, sir.

Q. Was that at a time when you were still managing director of and in charge of the St. Maarten Isle Hotel? A. I don't know whether I was managing director at that time, but I was owner in charge of the hotel at that time, yes, sir.

Q. And it was before you had any dealings with Leonard Holzer? A. Yes, sir.

Q. And it was at a time when you have told us you had not made an arrangement with Milton Parness for him to take over the casino, is that correct? A. I don't believe I knew him at that date.

Mr. Cohn: Excuse me, your Honor. May I inquire—I missed it—what was the date?

Mr. McGuire: June 24, 1970.

Mr. Cohn: Thank you.

Q. Is it a fact, Mr. Goberman, that you were tried on that charge in Pennsylvania in November of 1970? A. Yes, sir.

Q. Is it also the fact that you were convicted on that charge and that the judge handed down his decision on June 11, 1971? A. That is correct.

Q. Two days after you gave your deposition in Philadelphia? A. Yes, sir.

Q. Do you recall that day? A. Yes, I do.

Q. When you gave your deposition in Philadelphia on June 9, 1971 was your mind entirely on that deposition?

Mr. Cohn: Object to that.

The Court: I sustain an objection to the form of that question. At the time of the deposition the judge had not decision this, is that right?

The Witness: But I was told he was going to two days later.

Mr. McGuire: May this be marked as Government's Exhibit 196. (Government's Exhibit 196 marked for identification.)

Q. I would like to show you Exhibit 196, which purports to be a copy of the deposition that you gave on June 9, 1971. Do you remember Mr. Cohn asked you some questions about that? A. Yes, sir.

Q. About your testimony and the answers you gave, were they truthful or not? A. Yes, sir.

Q. What did you say at the place I am pointing to on page ? A. "I don't remember. My mind really isn't on this right now. I am just doing the best I can for you."

Q. As you sit there today, Mr. Goberman, do you remember having a discussion with your lawyer about the terms on which you would plead guilty to the second indictment that the federal government brought against you? A. Are you speaking of the court-appointed attorney?

Q. That's the one. A. It seemed that his interest was for me to plead guilty.

Q. Please, no conclusions. Just tell us whether you had a discussion on the terms on which you would plead guilty. A. I knew of no terms. He just wanted me to plead guilty, stating that he felt that he could get me probation if I plead guilty, and I refused to go along on that.

Q. Did you in fact ultimately plead guilty? A. I finally gave up. I couldn't fight any longer.

Q. Did you in fact ultimately receive a sentence of probation? A. Yes, sir.

Q. When you pleaded guilty do you remember what date that was? A. No, sir.

Q. Mr. Cohn and I, I think, are prepared to stipulate, if you will accept it, Mr. Goberman, that it was December 7, 1972, and that you were sentenced about a month later.

Mr. Cohn: January 4, 1973.

Q. Would you accept that, Mr. Goberman? A. Yes, sir, I would.

Q. Do you remember when you were indicted on that second federal charge, which had to do with your tax returns, did it not? A. I don't remember the exact date.

Q. If I showed you a copy of the indictment would that help? A. Yes, sir.

Mr. Cohn: I will stipulate the date, your Honor. The second indictment or the first income tax indictment was August 30, 1972.

Mr. McGuire: So stipulated.

Mr. Cohn: The criminal information was November 28, 1972.

Mr. McGuire: Agreed.

The Court: All right.

Q. Mr. Goberman, between the time you were convicted on your first indictment and the time you were indicted for the second time did you have any discussions with anybody representing prosecuting authorities in the government? A. I don't believe I did.

Q. The date on which you pleaded guilty was December 7, 1972. Let's see if you can keep that in mind. You remember that date? A. You told me that was the date. I didn't remember it. I will accept that.

Q. See if you can keep it in your mind, *December 7, 1972.* The date on which you were convicted and sentenced on your first charge was *June 11, 1971,* approximately a year and a half earlier. Can you keep that date in your mind? A. I am trying——

Q. Do you have it fixed in your mind now? A. Yes.

Q. Let me ask you again, between those times did you talk to anybody in the government who was in the position

of a prosecuting authority, and by that I mean Mr. Dowd, Mr. Campbell or Mr. Glaze from the Internal Revenue Service, in the year and a half between June of 1971 and December of 1972? A. Well, I would have to try to remember the date that I received a subpoena to come to the grand jury. I don't remember what date that was.

Q. Do you have trouble remembering dates, Mr. Goberman? A. It all depends how I feel. It depends. I am not as young as I used to be and I have gone through a lot. So I would say some time during the day it is a little difficult for me to be as fresh as I am at other times.

Q. All right. A. And I just don't remember——

Q. You talked about a subpoena to appear before a grand jury? A. Yes, sir.

Q. I think you said that that was the first time you talked to any prosecuting authorities about the St. Maarten Isle Hotel? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. I think Mr. Cohn and I can agree that that was October 26, 1971. That is the date of the subpoena.

Mr. McGuire: So stipulated?

Mr. Cohn: Surely.

Q. Now that was about six months after you were first convicted? A. Then that would be between the two dates that you told me to try to remember.

The Court: In the 18-month period?

The Witness: Yes, sir. So I appeared before the grand jury in Brooklyn? A. Yes, sir.

Q. And after that do we have your testimony correctly on cross-examination you had a number of contacts with various people from the government? A. Yes, sir.

Q. Including Agent Glaze, who is sitting back there? A. Yes, sir.

Q. And Agent Eisler who is sitting back there? A. Yes, sir.

Q. And Mr. Campbell from Washington? A. Yes, sir.

Q. And I think you mentioned a Mr. Friedman from Washington? A. Yes, sir.

Q. You talked to all of those people after you were subpoenaed to the grand jury? A. Yes, sir.

Q. And there came a time when you ultimately testified before a grand jury here in New York? I think you told us that. A. Yes, sir.

Q. Do you remember when that was? A. I don't remember the date.

Q. Would July 27, 1972 be—A. You would have to refresh—at this time I would say you would have to refresh my memory.

Q. I would like to show you a document which has already been marked as Exhibit 3503 for identification. Take a look at it. A. Is that the grand jury——

Mr. McGuire: I think Mr. Cohn and I will agree that that happens to be a transcript of the grand jury testimony.

Q. Do you have any doubt that the date on there, July 27, 1972 is the date that appears thereon? A. That's right.

Q. Now was that grand jury appearance before or after a great many contacts with representatives of the government?

The Court: That is a hard question.

Mr. McGuire: I will rephrase it.

The Court: Ask him did you talk to some of these government people before that before July 27?

The Witness: Yes sir.

The Court: Did you talk to some of them after that?

The Witness: Yes sir.

The Court: All right.

Q. Now was it before or after that . and jury appearance that you were indicted for the second time? A. Yes, sir, after.

Q. Before or after? A. After, if I remember.

Q. Within about a month, wasn't it? A. Yes, sir.

Q. Some deal, right, Mr. Goberman?

The Court: All right, don't comment on that.

Mr. Cohn: Your Honor, may we see you at the side bar for a minute?

The Court: I don't think so. No, the jury will disregard that comment. It was a gratuitous comment.

Q. Anyway, we have it clearly that you were indicted after you appeared before the grand jury? A. Yes, sir.

Q. Do you remember that distinctly? A. Yes, sir.

* * * * *

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